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IN THE UNITED STATES

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JUN 14 2002

OFFICE OF PETITIONS

APPLICANT(S): Timothy R. Bratton *et al.*

APPLICATION NO.: 10/046,933

FILING DATE: October 26, 2001

TITLE: DELIVERING MEDIA DATA TO PORTABLE COMPUTING DEVICES

EXAMINER: Unassigned

GROUP ART UNIT: 2161

ATTY. DKT. NO.: 21685-06158

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Box DAC, Commissioner For Patents, Washington, DC 20231, on the date shown below:

Dated: May 28, 2002

By: Thomas L. Ewing
Thomas L. Ewing, Reg. No. 34,328

BOX DAC
COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

**PETITION UNDER 37 CFR 1.53(e) REGARDING DRAWINGS DEPOSITED WITH
ORIGINAL APPLICATION NOW MISSING AT THE PATENT OFFICE**

The Notice to File Missing Parts of Nonprovisional Application, dated April 5, 2002, received in the above-identified patent application, includes a Notice of Omitted Items stating that two (2) sheets of formal drawings containing Figure 4 and Figure 7 have been omitted. A copy of the Notice to File Missing Parts that contains the Notice of Omitted Items is attached hereto. Applicants will respond separately to the Notice to File Missing Parts of Nonprovisional Application. The instant petition addresses only the Notice of Omitted Items.

Applicants contend that the drawing sheets containing Figure 4 and Figure 7 were deposited along with the entire application on October 26, 2001 in an Express Mail envelope labeled EL734639595US.

Adjustment date: 08/29/2002 AKELLEY
06/12/2002 AWONDAF1 00000158 10046933
01 FC:122 -130.00 OP

1

21685/06158/2007628/1

RefundRef: 08/29/2002 AKELLEY 0000120300

CHECK Refund Total: \$130.00

06/12/2002 AWONDAF1 00000158 10046933

01 FC:122

130.00 OP

Applicants submit the following evidence as proof of the deposit of Figure 4 and Figure 7 on October 26, 2001:

- Return Postcard showing deposit of 12 drawing sheets, the Return Postcard having no items checked off as an indication of non-receipt in accordance with MPEP 503.
- Declarations in support of the petition from the two patent secretaries who sealed the application in Express Mail envelope labeled EL734639595US stating that the allegedly omitted figures were included with the application.

Return Postcard

The Applicants included a self-addressed return postcard with the instant application that properly identified all the items submitted. MPEP 503 states that the properly identified items include: “(a) applicant’s name(s); (B) title of invention; (C) number of pages of specification, claims (for nonprovisional applications), and sheets of drawing; (D) whether oath or declaration is included; (E) a list of any additional forms included with the application (e.g., application transmittal form, application data sheet, fee transmittal form, and/or provisional application cover sheet); and (F) amount and manner of paying the fee.” (MPEP 503, p. 500-13, *emphasis added*.) The instant return postcard states that 12 drawing sheets have been submitted. The drawing sheets corresponding to Figure 4 and Figure 7 are two of these 12 drawing sheets.

MPEP 503 states that the Patent Office’s policy regarding return postcards is: “The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the postcard initialed by the person receiving the items.” MPEP 503, p. 500-15, *emphasis added*.

The postcard returned from the Patent Office has no items crossed off. A copy of the return postcard is attached hereto. Thus, the Patent Office has previously confirmed that all submitted items were received, including 12 sheets of drawings.

The Patent Office's policy regarding return postcards is: "A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." (MPEP 503, p. 500-14). Accordingly, the instant petition must be granted since the Applicants followed the procedures stated in the MPEP and the return postcard states that all items had been received.

Declarations in Support of Petition

Applicants further include declarations from the two patent secretaries who prepared the application for filing and who sealed the application in its Express Mail envelope for delivery to the Patent Office. *See, Statement in Support of Petition Under 37 CFR 1.53(e)* by Aurelia Nolen and *Statement in Support of Petition Under 37 CFR 1.53(e)* by Patricia Floris. These declarations describe the procedures followed in preparing the allegedly omitted drawings and of the return postcard, and the secretaries' confirmation that both of the allegedly omitted drawings were sealed in the same Express Mail package that contained the rest of the application filed on October 26, 2001.

Conclusion

Applicants have now promptly established prior receipt in the USPTO of the allegedly omitted drawing(s) at issue by way of: 1) a date-stamped postcard receipt, and 2) declarations from the two persons who sealed the application in the Express Mailing envelope that the allegedly omitted drawings were, in fact, submitted.

Applicants have now provided more than sufficient evidence to show that omitted drawings were submitted to the Patent Office. Applicants further observe that this application was filed at the time of a postal emergency that affected the Patent Office. *See, e.g.,* The Patent Office Notice entitled: "Patent Applications submitted to the United

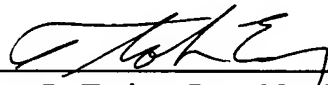
States Patent and Trademark Office between September 11, 2001 and December 1, 2001 via the United States Postal Service.” Applicants further observe that they did not receive the return postcard itself until February 11, 2002 (nearly four months after the application’s filing). Applicants still further observe that the return postcard received in the instant application is considerably discolored and contains what appears to be some form of machine processing mark in its lower right corner. Applicants suspect that the postcard, as well as the entire application, may have undergone some form of decontamination procedure, and that this decontamination procedure may have caused Figures 4 and 7 to be misplaced. While this, of course, is a speculation on Applicants’ part, the fact nevertheless remains that all the drawings, including Figures 4 and 7, were submitted to the Patent Office on October 26, 2001. Accordingly, favorable action on this instant petition is respectfully solicited.

In support of this petition, Applicants submit a copy of the return postcard, which was stamped and filed with the Patent and Trademark Office, indicating the number of drawings included in the filing of the subject application.

Applicants submit herewith the required petition fee of \$130.00.

Respectfully submitted,
TIMOTHY R. BRATTON *ET AL.*

Dated: May 28 2002

By: 
Thomas L. Ewing, Reg. No. 34,328
Fenwick & West LLP
Two Palo Alto Square
Palo Alto, CA 94306
Tel.: (415) 875-2336
Fax: (415) 281-1350



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APPLICANT(S): Timothy R. Bratton *et al.*

APPLICATION NO.: 10/046,933

FILING DATE: October 26, 2001

TITLE: DELIVERING MEDIA DATA TO PORTABLE COMPUTING DEVICES

EXAMINER: Unassigned

GROUP ART UNIT: 2161

ATTY. DKT. NO.: 21685-06158

STATEMENT IN SUPPORT OF PETITION UNDER 37 CFR 1.53(e)

Dear Sir:

This Declaration of Facts is made to establish that Figure 4 and Figure 7 were included in the submission of the above-identified application on October 26, 2001. This Declaration of Facts is being made by a person having first-hand knowledge of the facts recited herein.

I, AURELIA NOLEN, state the following:

1. I am a patent secretary at the law firm of Fenwick & West LLP in San Francisco, California.
2. I prepared for filing the patent application now accorded the serial number 10/046,933 for filing on October 26, 2001.
3. I attached a label to each of the 12 sheets of formal drawings that were included in the application, each label including a drawing sheet number, the application title, the inventor's name, the attorney docket number, and the express mail number.
4. I verified that the application contained all 12 drawing sheets, including drawing sheet 7 (Fig. 4) and drawing sheet 10 (Fig. 7). A true copy of Figure 4 (drawing sheet 7) is attached as Exhibit A, and a true copy of Figure 7 (drawing sheet 10) is attached as Exhibit B.

5. I prepared a filing receipt postcard that accompanied the application submission, the post card affirming that 12 sheets of formal drawings had been submitted.

6. I sealed the application, including the 12 sheets of formal drawings, in a single envelope, bearing the Express Mail No. EL734639595US, that was deposited with the U.S. Postal Service on October 26, 2001. A true copy of the Express Mail filing receipt for this envelope is attached at Exhibit C.


7. I reviewed the above-identified postcard following its return from the U.S. Patent Office and observed that the number of drawing sheets received has not been crossed off (or otherwise marked) by the patent office staff who reviewed the postcard. A true copy of the postcard is attached as Exhibit D.

8. Based upon the foregoing, my belief is that Fenwick & West LLP did include Figure 4 and Figure 7 in the above-referenced application.

I hereby declare that all statements made herein to the best of my knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,
Aurelia Nolen

Dated: May 24, 2002

By: 

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EXHIBIT D

Date Mailed: October 26, 2001 | Atty/Sec: TLE/an | Filing Date: HERewith
Application No.: NEW | Docket No.: 21685-06158
Applicants: Timothy R. Bratton et al.
Title: DELIVERING MEDIA DATA TO PORTABLE COMPUTING DEVICES

Please imprint Patent Office "date stamp" hereon to indicate receipt and then return card to addressee

- | | |
|--|--|
| <input checked="" type="checkbox"/> 48 pages of Specification, Claims & Abstract | <input type="checkbox"/> Request and Certification under 35 U.S.C. 122(b)(2)(B)(i) |
| <input checked="" type="checkbox"/> 12 sheets of formal drawings | <input type="checkbox"/> Amendment/Response |
| <input type="checkbox"/> Provisional Application Cover Sheet | <input type="checkbox"/> Response to Notice to File Missing Parts |
| <input checked="" type="checkbox"/> New Utility Application Transmittal | <input type="checkbox"/> Request to Correct Filing Receipt |
| <input type="checkbox"/> Transmittal | <input type="checkbox"/> IDS, PTO-1449, and cited references |
| <input checked="" type="checkbox"/> Fee Transmittal (in duplicate) | <input type="checkbox"/> Issue Fee Transmittal |
| <input type="checkbox"/> Declaration | <input type="checkbox"/> Letter to Chief Draftsperson |
| <input type="checkbox"/> Power of Attorney or Authorization of Agent | <input type="checkbox"/> Request for Certificate of Correction |
| <input type="checkbox"/> Assignment & Recordation Cover Sheet | <input type="checkbox"/> Small Entity Assertion Under 37 CFR 1.27 |
| <input type="checkbox"/> CPA Request Transmittal | <input type="checkbox"/> First Class Certificate of Mailing |
| <input checked="" type="checkbox"/> Application Data Sheet | <input checked="" type="checkbox"/> Box Patent Application |
| <input type="checkbox"/> Check in the amount of \$31046 U.S. PTO | <input checked="" type="checkbox"/> Express Mail No. EL734639595US |

Other: _____

10/046933



10/26/01

21685-06158

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EXAMINER: Unassigned

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STATEMENT IN SUPPORT OF PETITION UNDER 37 CFR 1.53(e)

Dear Sir:

This Declaration of Facts is made to establish that Figure 4 and Figure 7 were included in the submission of the above-identified application on October 26, 2001. This Declaration of Facts is being made by a person having first-hand knowledge of the facts recited herein.

I, PATRICIA FLORIS, state the following:

1. I am a patent secretary at the law firm of Fenwick & West LLP in San Francisco, California.
2. I assisted Aurelia Nolen prepare for filing the patent application now accorded the serial number 10/046,933 for filing on October 26, 2001.
3. I verified that Mrs. Nolen attached a label to each of the 12 sheets of formal drawings that were included in the application, each label including a drawing sheet number, the application title, the inventor's name, the attorney docket number, and the express mail number.
4. I verified that the application contained all 12 drawing sheets, including drawing sheet 7 (Fig. 4) and drawing sheet 10 (Fig. 7). *See*, Exhibits A and B of the Declaration of Aurelia Nolen for true copies of Figure 4 (drawing sheet 7) and Figure 7 (drawing sheet 10).

5. I reviewed the filing receipt postcard that accompanied the application submission, the post card affirming that 12 sheets of formal drawings had been submitted.

6. I verified that Aurelia Nolen sealed the application, including the 12 sheets of formal drawings, in a single envelope, bearing the Express Mail No. EL734639595US, that was deposited with the U.S. Postal Service on October 26, 2001. *See*, Exhibit C of the Declaration of Aurelia Nolen for a true copy of the Express Mail filing receipt.

7. I reviewed the above-identified postcard following its return from the U.S. Patent Office and observed that the number of drawing sheets received has not been crossed off (or otherwise marked) by the patent office staff who reviewed the postcard. *See*, Exhibit D of the Declaration of Aurelia Nolen for a true copy of the postcard.

8. Based upon the foregoing, my belief is that Fenwick & West LLP did include Figure 4 and Figure 7 in the above-referenced application.

I hereby declare that all statements made herein to the best of my knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,
Patricia Floris

Dated: May 24, 2002

By: Patricia A. Floris